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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/340,566 06/28/99 TURK

J 01929-P0001E

TM31/1024

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EXAMINER

ROMAIN, J

ART UNIT

PAPER NUMBER

2163

DATE MAILED:

10/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/340,566

Applicant(s)

Turk et al.

Examiner

Romain Jeanty

Group Art Unit
2765



☒ Responsive to communication(s) filed on Jul 12, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 12-15 is/are pending in the application

Of the above, claim(s) _____ is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 12-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Response to Amendment

1. The amendment filed on July 12, 2000 has been considered but is ineffective to overcome the 35 U.S.C. 101 rejection in paragraph 5 of paper No 3. The rejection is maintained and is restated below for the Applicant's convenience.

Double Patenting

2. The terminal disclaimer filed on July 7, 2000 of paper No.5 has overcome the double patenting rejection in paragraph 2 of paper No.3. Therefore the examiner withdraws this rejection.

Claim Rejections - 35 U.S.C. § 112

3. The amendment filed on July 12, 2000 has overcome the 35 U.S.C. 112 rejection in paragraph 4 of paper No 3.

Claim Rejections - 35 U.S.C. § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

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5. Claims 12-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The claims are neither physical things nor statutory process. The claims do not define any structural and functional interrelationships between the data (file data) (non-functional descriptive material data for performing any functions). It is to be noted that code (i.e., computer software program) does not do anything per se. Instead, it is the code stored on a computer readable medium that, when executed, instructs the computer to perform various functions. The following claim is a generic example of a proper computer program product claim:

**A computer program product embodied on
computer-readable medium and comprising
code that, when executed, causes a computer
to perform the following:**

Function A

Function B

Function C, etc...

Thus, the claims are rejected as being non-statutory as described above.

Response to Arguments

6. Applicant's amendment has moved the claims from functional descriptive material to non-functional descriptive material which remains non-statutory. It should be noted that code (i.e., a computer software program) does not do anything per se. Instead, it is the code stored on a computer readable medium that, when executed, instructs the computer to perform various functions.

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Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached on weekdays from 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz, can be reached at (703) 305-9643.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703)308-3900.

Romain Jeanty


ERIC W. STAMBER
PRIMARY EXAMINER

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October 18, 2000.